(282)

A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 4976 OF 2005

PETITIONER		M/s. Digital Weighing Systems Pvt. Ltd., Through : Chief Executive (Sales), Plot No.P-1, B&C, P-2, Industrial Area, Tifra, Bilaspur (C.G.)
	Versus	
RESPONDENTS	1.	Food Corporation of India, Through: Chairman cum Managing Director, Khadya Sadan, 16/20, Barakhmba Lane, New Delhi – 01.
	2.	Executive Director, Food Corporation of India (Engg.), Project Implementation Division, Scope Minar Core 4, IInd Floor, Lakshmi Nagar, District Centre, New Delhi – 110 092.
	3.	Sr. Regional Manager, F.C.I., Regional Office, Telibanda Chowk, Raipur.
	4.	Sr. Regional Manager, FCI, Regional Office, Chetak Building, Maharana Pratap Nagar, Habibganj, Bhopal-462 011.
	5.	Sr. Regional Manager, FCI Regional Office, Deeraj Arama Building, IInd Floor, Bandra East, Mumbai – 51.
	6.	M/s. Leotronics Scales Pvt. Ltd., 47, Hide Market, 1st Floor, Amritsar – 143 001.

Present : Shri Ravish Agrawal, learned Sr. Advocate with Shri P.S. Koshy, learned counsel for the petitioner.
Shri Prashant Jayaswal, learned Sr. Advocate with Shri Vinay Pandey, learned counsel for the respondents 1 to 5.
Thakur Vijay Singh and Shri S.S. Rajput, learned counsel for respondent No.6.

(ORAL ORDER)
(Passed on 6th February, 2006)

The petitioner is a Private Ltd. Company engaged in business of manufacturing and services of weighing systems. The petitioner was supplier of weighing systems to the Food Corporation of India, the first respondent herein. On 23rd August 2005, a notice signed by Shri A.K. Sahni, General Manager (Engineering) under the authority and on behalf of the Executive Director (Engg.), Food Corporation of India, Project Implementation Division, New Delhi, the second respondent herein, was issued to the petitioner, a copy of which is marked as document D-1 along with the rejoinder filed by the petitioner to the return of respondent No.3, which reads as follows :

"No. Engg./Mech./VIC CASE/2004/272 Dated 23rd Aug. 05.

M/s. Digital Weighing System,

Plot NO.P1 B&C, P2,

Industrial Area, Tifra,

Bilaspur (C.G.) 495 223.

Sub:- Poor performance of Digital Make Electronic Weigh Bridges supplied to FCI – regarding.

Sir,

It has been observed that you have supplied and installed electronic weigh bridges of 30/40 M.T. at various centres in different Zones (such as West, South and NE Zones).

From the performance reports received from the filed offices in Head Qrs., it has been observed that the

performance of the most of the electronic weigh bridges including their installation have not been found satisfactory. Some of the electronic weigh bridges of Digital make supplied in West Zone have been found to have inherent defects in the installation of weigh bridges including non-rectification of defects in the equipment, such as UPS, which has been supplied by you along with the main weighbridge. The installation defects pertain to improper earthing, improper enclosures of load cell cables, poor plinth protection, inferior ramp, improper wiring and light fittings (both internal and external). These defects have been observed for the electronic lorry weighbridges installed at Itarsi, Durg, Mandir Hasaud depots in West Zone.

As far as South Zone is concerned, a number of defects have been reported for the lorry weigh bridge installed at Kazipet (Warrangal Distt.). These defects pertain to vast variation in the weighment, which was reported to be of the order of 70 to 100 Kg., besides zero errors. The load cells were also reported to be defective, for which you have been intimated a number of times. It has further been reported from the filed office that during the months of August & Sept. 2002 your technicians attended the weighbridges for rectification of defects but they failed to rectify the same. It has also been reported that for major defects in the weigh bridge, risk and cost notice were also served on you.

As far as North East Zone is concerned, the performance of electronic lorry weigh bridges installed at FSD, Ram Nagar (Silchar) and Nandan Nagar was found to be very poor. The weigh bridges have not functioned at all for most of the time since their installation at these sites. It is also observed that the original load cells installed were replaced and their test reports were not furnished by you inspite of repeated reminders from the field officers in

respect of Ram Nagar (Silchar). It is also observed that all the 4 load cells installed earlier were replaced with load cells of double ended compression type with capacity 15 tonnes at Nandan Nagar, whereas it was obligatory for you to supply and install load cells of 23MT capacity (compression type) as per terms of the contract.

It is thus observed that FCI has suffered loss for not utilizing these weigh bridges due to their improper working and mal-functioning of the equipment. You are, therefore, called upon to explain the reason for supplying and installing electronic weigh bridges, which are not conforming to the prescribed specifications, resulting in their poor performance, which has put FCI to direct and indirect loss, within 15 days of the issue of this letter. If your reply is not received within this period, it will be presumed that you have nothing to say and FCI will take action as deemed fit, including banning of business with you.

Yours faithfully,

(A.K. SAHNI)
GENERAL MANAGER (ENGG.)
FOR EXECUTIVE DIRECTOR (ENGG.)"

The petitioner submitted his reply to the above show cause notice on 31/8/2005, a copy of which is marked as Annexure P-11, which reads as follows :

"THE GENERAL MANAGER (ENGG.)
PROJECTS IMPLEMENTATION DIVISION,
SCOPE MINAR CORE- 4, 2ND FLOOR,
LAXMI NAGAR DISTT. CENTRE,

DELHI – 110 092

TEL NO.011-22010206,22010208.

Dear Sir,

SUB: RECTIFICATION OF DIGITAL MAKE WEIGHBRIDGES – REGARDING .

REF: YOUR LETTER NO: ENGG/MECH/VIG CASE/2004/272 DTD 23.08.2005.

We acknowledge the receipt of above referred letter. In this context, being informed the course of action has already been initiated to overcome the present situation whatsoever, found necessary at different zone. FCI storage depot as indicated in the said letter.

1. Under West Zone, our service engineer has already visited FSD Durg on 30.08.2005 and joint inspection carried out for the rectification to be under taken for Weighbridge at FSD DURG. A report in support is enclosed herewith.

   In the same fashion the excise will be undertaken at FSD MANDIRHASAUD also on 01.09.2005, followed the rectification. Expected completion for these two FSD may be considered within 8 to 10 days from date.

   At FSD Itarsi, our service engineer is expected to visit on 05.09.2005 and an advance intimation is already sent in regard. The rectification found necessary for Weighbridge at FSD also will be undertaken on immediate basis and will be completed within next 4 to 5 days from reporting date.

2. Under North Zone our service engineer is already on journey to reach Agartala Nandan Nagar FSD, along with spares and material that are to be replaced as desired. An intimation in this regard has been sent to concerned office and rectification what-so-ever will be completed by 1st week of September 2005. Followed by the same service engineer will arrive at FSD Ramnagar, Silchar to undertake rectification for Weighbridge as found necessary. As asked by concerned North East Zone office it is expected the work will be completed by the time frame given.

3. As far as FSD Kazipet under South Zone is concerned, has been discussed while appeared before. Few documentary evidence in support was

also submitted and convinced satisfactorily during across the table discussion.

However we have undertaken all possible work on war foot to ascertain proper working of Weighbridges of FCI.

In convenience caused is highly regretted.

Thanking you,

Yours faithfully,

For DIGITAL WEIGHING SYSTEMS PVT. LTD.

CHIEF EXECUTIVE (SALES)"

The petitioner submitted one more reply dated 15/9/2005 to the show cause notice. The second respondent having considered the replies of the petitioner, ultimately passed the impugned order on 28/9/2005, a copy of which is marked as Annexure P-1, which reads as follows :

"No. Engg/Mech/Vig.Case/2004 Dated 28.09.2005.

M/s. Digital Weighing System,

Plot No. P1 B&C, P2,

Industrial Area Tifra,

Bilaspur (CG) 495 223.

Sub: Non-performance of Digital Make Electronic Weighbridge supplied and installed at different locations in FCI depots – Banning of Business dealings – Regarding.

Sir,

In response to Show-cause notice of even no. dated 23.08.2005 served on you, your reply vide letters No.DWS/BSP/05-06/775 dated 31.08.2005 and DWS/BSP/05-06/257/839 dated 15.09.2005 has not been found satisfactory. The competent authority has, therefore, decided to ban your business dealings with FCI, in any

manner, whatsoever for a period of 2 (two) years with immediate effect.

Yours faithfully,

(R.N. PRASAD)
ASSTT. GENERAL MANAGER (E/M)
For EXECUTIVE DIRECTOR (ENGG.)"

(2) The petitioner being aggrieved by the order of the second respondent dated 28/9/2005 has filed this Writ Petition praying for the following reliefs:-

"**RELIEF (S) SOUGHT:**

It is therefore, prayed that the Hon'ble Court may be pleased to issue an appropriate Writ/Writs, Direction/Directions, Order/Orders to the respondents holding:-

a) That, the impugned order and Annexure P-1, dated 28.09.2005 is bad in law and is set aside/quashed,

b) Directing the respondents not to refrain from opening the price bids submitted by the petitioner's in the tender proceedings pertaining to supply of Weigh Bridges in the three states of Chhattisgarh, Madhya Pradesh & Maharashtra."

(3) At this stage itself, it is relevant to dispose of the prayer contained in clause (b) of paragraph 7. In the additional return filed on behalf of the third respondent, in paragraph 2 thereof, it is stated that the Senior Regional Manager of Raipur Region has scrapped the tender

proceedings by order dated 25/12/2005 and 31/12/2005 regarding installation of weighbridges in Chhattisgarh area. The correctness of the above statement made on oath by the third respondent is not contested before me by the learned Senior Counsel appearing for the petitioner. Hence, the relief sought in clause (b) of paragraph 7 of the Writ Petition does not survive for decision-making and it is accordingly disposed of. The resultant position is that only the relief claimed in clause (a) of paragraph 7 survives for consideration and decision-making.

(4) I have heard Shri Ravish Agrawal, learned Senior Counsel assisted by Shri P.S. Koshy, learned counsel for the petitioner, Shri Prashant Jayaswal, learned Sr. Counsel assisted by Shri Vinay Pandey, learned counsel for respondents 1 to 5 and Thakur Vijay Singh and Shri S.S. Rajput, learned counsel for respondent No.6.

(5) Shri Ravish Agrawal, learned Senior Counsel for the petitioner would contend that the impugned order of the second respondent dated 28/9/2005 could not be sustained in law for more than one reason. According to learned Senior Counsel, the impugned order has the effect of blacklisting the petitioner from doing any business with Food Corporation of India in any manner whatsoever, for a period of 2 years and therefore, principles of natural justice and fair play in action required that the second respondent before passing such a drastic order ought to have given fair and adequate opportunity to the petitioner to put-forth his case with regard to the allegations contained in the show-cause notice dated 23.08.2005. Learned Senior Counsel would next contend that the impugned order is based on subjective satisfaction

of the second respondent and not on objective considerations, which are germane to the decision-making. On the other hand, learned Standing Counsel for the Food Corporation of India and their officers while supporting the impugned order passed by the second respondent would point out that when the show-cause notice was served on the petitioner, it did not contest any of the allegations levelled against it in the show-cause notice, on the other hand, a careful reading of the reply filed by the petitioner dated 31/8/2005 would disclose that the petitioner admitted the defects in the installations and malfunctions of weighing systems and undertook to rectify all those defects by deputing its engineering personnel at various places. It was also highlighted by the learned Standing Counsel for the respondents that the petitioner did not seek any better particulars or information on receipt of the show-cause notice. In that view of the matter, the learned counsel would maintain that there was no merit in the grievance of the petitioner that it was denied fair opportunity of being heard.

(6) Having heard learned counsel for the parties, a short question that arises for decision-making is whether any permissible ground is made out on the basis of which, this Court could step-in under Article 226 of the Constitution and interfere with the impugned order passed by the second respondent. At the outset, it needs to be noticed that it is settled law that blacklisting a person in any form violates civil rights of that person and therefore, before blacklisting a person, the law requires that affected person should be appraised and he should be given a fair opportunity of being heard in the matter. But, hearing does not necessarily mean personal hearing. Generally speaking, administrative

authorities before taking decision are not expected to provide personal hearing, unless the statute directs. Even in the absence of statutory prescriptions, having regard to the complexity of the case, which the administration has called upon to decide, personal hearing may be necessary. In other words, whether personal hearing should be given in a given case by the administrative department or the statutory authority would depend upon the facts and circumstances of the case, issues that arise for decision-making, complexity in terms of law and facts etc. There cannot be any hard and fast rule in that regard. Coming to the facts of this case, the second respondent, in my considered opinion, in the show cause notice dated 23.08.2005, in great elaboration, has set out the defects and malfunctions of the weighing systems installed at the gates of the Food Corporation of India godowns in various places. I could have appreciated the arguments of learned Senior Counsel, if the petitioner were to demand better particulars and information from the second respondent after receipt of the show-cause notice and the second respondent declining to furnish such particulars and information. The petitioner for the reasons best known to him without any demur and protest accepted every defect and malfunctions pointed out by the second respondent in the impugned notice as correct and came forward to rectify them everywhere by deputing its engineering staff. If that was the conduct of the petitioner, it should not lie in its mouth now to contend that fair opportunity was not given to it to defend itself against the show-cause notice in the sense that necessary details and records were not sent along with the show-cause notice.

(7) Having heard the learned counsel for the parties for a considerable time, I am satisfied that the second respondent before taking the impugned decision has adhered to the rules and principles which go with fairness in action and therefore, the impugned action could not be condemned as violative of principles of natural justice or violative of Article 14 postulates. The administrative orders like the impugned order need not disclose every reason or circumstance which weighed the decision-making authority, but, when such decision is a subject matter of judicial review, it is enough, if the records placed before the Court show that the decision-making authority had applied its mind to the relevant materials and taken the decision on objective facts, that is to say, on relevant materials and eschewing irrelevant considerations.

(8) There is one more weighty reason for me not to interfere with the impugned order. The impugned order has the effect of terminating an ordinary contract between the parties. I could hardly find any public law element except for the fact that the Food Corporation of India is a state within the meaning of Article 12 of the Constitution of India and an authority for the purpose of Article 226 of Constitution. It is quite often held and reiterated that simply, because, a contracting party is a 'State' within the meaning of Article 12 of the Constitution or an authority for the purpose of Article 226 of the Constitution, that fact itself would not be a justification for the Courts to undertake judicial review of termination of contracts. Furthermore, the pleadings of the parties filed in this case bristle with the disputed facts for resolution. According to the second respondent, the weighing systems installed by the petitioner are defective

and malfunctioning and not in conformity with the prescribed standards, whereas, all those allegations are squarely denied by the petitioner and it is maintained by it that the allegations are false. Therefore, naturally out of these pleadings, factual contentious issues will arise for decision-making. Looking from that angle also, this is not a fit case for entertaining a petition under Article 226 of the Constitution of India.

(9) In the result and for the foregoing reasons, the Writ Petition is dismissed. No costs.

Sd/-
Chief Justice

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